

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

BASIC INDUSTRIES, INC.

Employer

and

INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL 53,
AFL-CIO

Petitioner

Case 1-RC-21834
(formerly 15-RC-8573)

DECISION AND DIRECTION OF ELECTION¹

The Petitioner, International Association of Heat and Frost Insulators and Asbestos Workers, Local 53, AFL-CIO, seeks to represent a craft unit of approximately 24 full-time and regular part-time IMS/insulator employees employed by Basic Industries, Inc. (Employer) at a crude oil refinery, owned by Motiva Enterprises, in Convent, Louisiana.²

The Employer contends that the unit sought by Petitioner is inappropriate because the IMS/insulator employees do not possess a community of interest separate and distinct from its other employees and leadpeople. The Employer therefore seeks to add approximately eighteen refractory nozzlemen, painters, and leadpeople to Petitioner's proposed unit.³

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² The petition was amended on the record to clarify the job classifications in the proposed unit, to change the jobsite location, and to exclude lead personnel.

³ In its post-hearing brief, the Employer asserts that the parties stipulated to exclude "...temporary employees, such as those hired for specific short-term projects, including what is known as turnaround work..." from the proposed

The Petitioner has agreed to proceed to an election even if the bargaining unit proposed by the Employer is found to be the appropriate unit.

No history of collective bargaining exists between Petitioner and the Employer at the Motiva Enterprises job site.

I find, based on the record, that the IMS/insulator employees do not constitute a separate craft for purposes of collective bargaining, and that the appropriate unit includes all IMS/insulators, refractory nozzlemen, and painters employed by the Employer at Motiva Enterprises. I also find, based on the record, that the leadpeople are not statutory supervisors, and therefore are eligible for inclusion in the bargaining unit.⁴

The Organizational Structure

The Employer, an insulation contractor with its principal place of business located in Baton Rouge, Louisiana, is engaged in installing and removing insulation, including lead and asbestos abatement, refractory insulation, painting, and other insulation-related work at Motiva Enterprises, a crude oil refinery.

Chris Langlois, the site manager, is the highest-level manager onsite for the Employer at Motiva.⁵ In his absence, his brother, assistant site manager, maintenance supervisor, and general foreman Gregg Langlois, manages operations. As maintenance supervisor, Gregg Langlois makes daily work assignments to employees in all job classifications. Tom Varnado, another general foreman, is the project supervisor; he supervises all employees on special projects. Ronald Rogers, coating (painting) supervisor and general foreman, and Jerry Hussey, refractory general foreman, supervise refractory nozzlemen when they are assigned painting work. Ricky

unit. Although the Employer proposed such a stipulation, the record makes clear that the Petitioner rejected the stipulation. Moreover, the record contains no evidence with respect to the temporary employees in question. For these reasons, relevant Board law with respect to temporary employees will govern their eligibility for inclusion in the unit. Personal Products Corp., 114 NLRB 959 (1955); United States Aluminum Corp., 305 NLRB 719 (1991); Owens-Corning Fiberglas Corp., 140 NLRB 1323 (1963).

⁴ As the Petitioner has indicated its desire to represent employees in the unit I have determined to be appropriate, which is broader than the petitioned-for unit, in accordance with the Board's usual practice, I shall provide the Petitioner a reasonable period of time, not to exceed ten days, from the date of this Decision and Direction of Election in which to demonstrate the requisite showing of interest among employees in the unit found appropriate. In the event that the Petitioner does not submit such additional evidence within ten days, the Direction of Election shall be vacated. Alternatively, the Petitioner will be permitted to withdraw its petition without prejudice upon written notice to me within 10 days from the date of the Direction of Election. The Excelsior List may initially be used by the Regional Director to assist in determining whether there is an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when and if it is determined that the Petitioner has made an adequate showing of interest in the unit found appropriate.

⁵ Chris Langlois was the only witness to testify on behalf of the Employer at the hearing.

Price is scheduler and turnaround supervisor. Presley Landry is safety representative.⁶ Chris Mohon is the asbestos supervisor. His status is in dispute.

The record indicates that the Employer employs six leadpeople, Brian Langlois (brother of Chris and Gregg), Clovis Vaughn, Juvenal Torres, Victor Ceja, Chris Mohon, and Charles David Moore, all of whom Petitioner seeks to exclude from the proposed unit.⁷ Mohon is leadperson for the insulation mechanics on asbestos abatement projects.⁸ Langlois, Vaughn, Torres, and Ceja are also leadpeople for the insulator mechanics, and Moore is the leadperson for the painters.⁹

Only three classifications of employees work for the Employer at Motiva: insulator mechanics, refractory nozzlemen bricklayers, and painters.¹⁰ At the time of the hearing, there were approximately 25 insulator mechanics, 7 refractory nozzlemen bricklayers and 9 painters employed by the Employer at the Motiva site.

The Nature of the Work

The Employer's work at Motiva falls into two categories: routine maintenance and special projects and turnarounds. Routine maintenance projects constitute about 80 percent of the Employer's work, and consist of removing and installing insulation, and removing and applying paint coatings to vessels, piping and equipment. The remainder of the work is performed on special projects and turnarounds, during which production ceases and equipment is shut down for repairs and refurbishing. During turnarounds, which occur on average once a year, the Employer assigns its current employees to projects, and then hires additional employees, as necessary, to fill the gaps.

⁶ The parties did not stipulate that any of these individuals were statutory supervisors under Section 2(11) of the Act, however, neither party argues for their inclusion in the unit. The record offers bare but sufficient evidence to support their exclusion as statutory supervisors. Based on their undisputed authority to discipline employees, I find these individuals to be statutory supervisors within the meaning of the Act.

⁷ Petitioner argued for the exclusion of Mohon and other leadpeople from the unit on the grounds that they do not share a community of interest with the IMS/insulator employees and are closely aligned with management. When asked directly by the hearing officer whether it was taking the position that the leadmen are supervisors, Petitioner stated "Not necessarily, but I think that they – I guess the answer is maybe, but I don't think we have to litigate that at this point." Tr. at 234.

⁸ Mohon was identified as both asbestos supervisor and leadperson on asbestos abatement projects. Since no distinction was made in the record between these two positions, I treat them as one.

⁹ The fact that Torres' name was not included on Employer's Exhibit 1, which purportedly lists all employees, including leadpeople, who were working at Motiva at the time of the hearing, was not addressed at the hearing. According to Chris Langlois' testimony, the list includes routine maintenance employees, as well as employees hired during the turnaround that was underway at the time of the hearing. Both Langlois and one of the Petitioner's witnesses identified Torres as a leadperson for the insulator mechanics.

¹⁰ The job classifications are referenced in the record as IMS, RNBS, and PS, respectively. The IMS/insulator mechanics are also referred to as insulator mechanics, while the refractory nozzleman bricklayers are referred to as refractory nozzlemen.

The insulator mechanics' primary work consists of installing and removing insulation from the exterior of piping and vessels, and applying weatherproof jacketing and cryogenic insulation to vessels to create a vapor barrier that keeps vapors out or prevents moisture from entering. Approximately six of the insulator mechanics are certified by the State Department of Environmental Quality to do asbestos abatement; they perform those duties in addition to routine insulation projects, on an as-needed basis.

Refractory work includes fireproofing beams and buildings, and installing internal insulation (to provide heat conservation inside a vessel such as a boiler) during turnarounds. The refractory nozzlemen install gunite, brick, high-temperature plastic, and ceramic fiber insulation. Both gunite and brick insulation require specialized skill and experience to install. Gunite is installed using a gunite rig, which sprays the gunite at its target, and requires some skill to operate. High-temperature plastic and ceramic fiber insulation do not require the same level of skill and experience to install, and are installed by all three job classifications. About 50 percent of refractory work is done during turnarounds; the remainder is done during routine maintenance periods.

The primary work of the painters is to apply coatings using sprays, brushes, and rollers, and remove it by means of hand prep, waterblasting, and sandblasting. Hand prep, as the name suggests, involves removing paint manually using sandpaper.

Participation in training or apprenticeship program

The Employer only hires experienced journeyman insulator mechanics. Although no employee is required to complete a formal training or apprenticeship program, the Employer considers its insulator mechanics' completion of an insulation and metalwork course (referred to in the record as "ABC") desirable, and reimburses them for the cost if they complete it successfully.

Insulator mechanics hired to perform asbestos abatement are required to present the site manager, Chris Langlois, with proof of their certification to perform that work by the Louisiana Department of Environmental Quality. To be certified, employees must complete a thirty-two hour training course. The Employer does not provide the training necessary for certification, nor does it reimburse employees for the training or certification costs. In order to be able to supervise asbestos abatement, an employee must be certified as a "competent person." To achieve that certification, they must complete a forty-hour course and eight-hour annual update courses. Chris Mohon is certified as a competent person, as are site manager Chris Langlois, assistant site manager Gregg Langlois, and supervisors Tom Varnado and Ronald Rogers.

Finally, employees who perform lead abatement must complete a general knowledge film training session before they can perform lead abatement. They are not required to be certified in lead removal as a prerequisite to hiring. The record does not specify which classifications of employees perform this work, or what percentage of their overall work it constitutes.

Functional integration of work

The record indicates that about sixty percent of the time during routine maintenance employees in all three classifications are assigned to work on the same work order. Employees may either work on projects specific to their classification, or, if there is insufficient work for them within their classification, they may assist employees in another job classification in completing a project. For example, on refractory insulation projects such as brick and gunite insulation that require skilled craftspeople, painters may be assigned to work alongside refractory mechanics as helpers if a work order calls for more refractory work than painting work on a given day.

Painters, refractory nozzlemen, and insulator mechanics also work together on sandblasting projects. Blasting typically occurs after insulation has been removed, and the pipe, vessel, or equipment has been inspected for corrosion or paint damage. If repairs or repainting are required, a work order issues specifying the nature of the work required to complete the project. After insulation removal, a vessel may require a total blast job, repainting, and reinsulation, or it may just require a touch-up paint job. Since sixty percent of work orders require some type of insulation or painting work, it is not uncommon for employees from all three classifications to work on a particular job.

By contrast, projects involving lead or asbestos abatement require that the employees performing the work be segregated from other employees, due to safety concerns associated with exposure. Although it is primarily performed by insulator mechanics, asbestos abatement is considered by the Employer to be a separate craft, and occurs primarily during turnarounds or on special projects. Because of the nature of the work and the hazards of exposure, it is performed in a contained area, separate from other work areas and apart from other employees who are not working on those projects.

The evidence in the record of how frequently employees work on asbestos abatement projects is sparse. Employer witness Chris Langlois testified that on a typical day during routine maintenance there is unlikely to be an asbestos abatement job. The Petitioner's witness, Jorge Pinto, who was an asbestos-certified insulator mechanic, testified that he spent fifty percent of his time or less working on asbestos abatement projects, and that although he did other insulator mechanic work, he never performed the work of a refractory nozzleman or painter.¹¹ Another Petitioner witness, Oscar Madrid, testified that he was hired to do asbestos abatement, and that he had no personal knowledge of what the painters, refractory nozzlemen, and insulator mechanics who were not working with him were doing while he worked in the confined area doing asbestos abatement.

¹¹ Pinto was laid off by the Employer shortly before the October 8, 2004 hearing. He testified that he had worked for the Employer in the past, and that most recently he worked for the Employer as an insulator mechanic from July 28, 2004 until about late September.

Overlapping duties

The record indicates that at least some of the duties of the petitioned-for insulator mechanics overlap with those of the refractory nozzlemen and the painters. Although the Employer primarily assigns insulator mechanics to perform insulation duties, the painters spend as much as twenty-five percent of their time assisting or performing the work of insulator mechanics.¹² Likewise, the refractory nozzlemen spend up to seventy-five percent of their time during routine maintenance on painting and insulation projects, since there is insufficient refractory work to occupy them full-time.¹³ When no refractory work is available, three of the refractory nozzlemen are generally assigned non-refractory insulation projects (Victor Ceja, Brian Langlois, and Clovis Vaughn), one is generally assigned painting projects (Mike Russo) and two alternate between non-refractory insulation and painting projects (Herbert and Israel Doucet).¹⁴ When they are assigned to work with the insulator mechanics, the refractory nozzlemen report to the maintenance supervisor. There is no evidence in the record of what percentage of the refractory nozzlemen's time working on non-refractory projects is spent on regular insulation, as opposed to painting projects.

In addition, while they are, on the whole, more highly-skilled than the other two classifications of employees, most of the refractory nozzlemen are also painters and blasters, since many of the skills they use in performing their refractory duties are transferable to spraying, brushing, and rolling paint. Sandblasting, for instance, is typically a two-person job, performed by painters and refractory nozzlemen. One employee operates the blast hopper, while the other operates the hose. Although insulator mechanics are typically not involved in sandblasting, they assist with cleanup in the blast yard, where blasting occurs on a daily basis.

All seven refractory nozzlemen also apply weatherproof jacketing, although it is unclear from the record how frequently they perform this task. In addition, one refractory nozzleman, Clovis Vaughn, is certified to perform asbestos abatement, and assists other certified insulators with asbestos abatement projects when he is not doing refractory work.

Chris Langlois also routinely assigns insulator mechanics to perform refractory functions, including the installation of high-temperature plastic and ceramic fiber insulation, as well as to assist the refractory nozzlemen in moving material and cleaning up when they are laying bricks or installing gunite insulation.

¹² Four painters and their leadperson, Charles David Moore, possess the same skill base as an insulator mechanic with respect to performing cryogenic and thermal insulation work.

¹³ Langlois' testimony with respect to this figure was inconsistent. He testified on direct examination that they perform refractory insulation work during routine maintenance only about half of the time. On cross-examination, however, he testified that they only spend about one quarter of their time during routine maintenance engaged in refractory insulation work. Either way, they spend at least half of their time on routine maintenance doing non-refractory work.

¹⁴ The record does not indicate the nature of work generally assigned to the seventh refractory nozzleman, Tyrone Doucet, when no refractory work is available.

The evidence with respect to how often insulator mechanics perform the work of refractory nozzlemen and/or painters is contradictory. Langlois testified that he routinely assigns insulator mechanics to painting and refractory insulation projects when there is greater demand for work in those areas. When they perform refractory work, the insulator mechanics and painters work alongside the refractory mechanics, under common supervision by the refractory supervisor. Similarly, when they are assigned to work with the insulator mechanics, the refractory nozzlemen report to the maintenance supervisor. Langlois did not testify about what percentage of time the insulator mechanics spend doing work outside their craft.

By contrast, the Petitioner's three witnesses, all insulator mechanics, testified that, aside from Victor Ceja, a refractory nozzleman, they have never observed an employee in another craft perform insulator mechanics' work.¹⁵

Assignment of work on craft or jurisdictional lines

The evidence indicates that although Chris Langlois attempts to adhere to craft distinctions in making work assignments, he crosses craft lines when needed. Such crossing of craft lines occurs on a routine basis, depending upon the needs of Motiva. Specifically, the Employer must employ individuals in each of the designated crafts in fulfillment of its contractual obligation to Motiva. Langlois assigns work in response to work orders from Motiva that specify the number of man-hours in each craft required to complete a given project. Consistent with these work orders, he assigns employees within their craft whenever possible. However, if a work order calls for more than the available manpower in a particular craft (and less in another), Langlois assigns employees, as needed, to work in a different craft at a level consistent with their skill and experience.

Langlois assigns employees in all three classifications to fireproofing, which accounts for eight to ten percent of their time. Although painters typically do not possess the skills to operate a gunite rig, Langlois assigns them to assist refractory nozzlemen by loading the gunite hoppers and cleaning up. While doing this, the painters work side-by-side with the refractory nozzlemen. Likewise, although painters do not possess the skill level to do brickwork on their own, they may be assigned to mix mortar and cut bricks, working alongside the refractory nozzlemen as helpers. When the painters or insulator mechanics assist the refractory insulators with plastic or ceramic insulation, they use the same tools and equipment, and work under common supervision.

The only evidence in the record of transfer of employees between crafts was uncontested testimony by Chris Langlois that some insulators have become bricklayers "over the years."

¹⁵ Only one of them, Jorge Pinto, might have had direct knowledge, since he spent fifty percent of his time or more working on regular insulation projects other than asbestos abatement. However, since he was employed for less than three months by the Employer, and since Petitioner did not develop his testimony concerning the nature of the work he did at those times, his testimony is of limited value, and I therefore accord it the appropriate weight.

Terms and Conditions of Employment

Chris Langlois is responsible for hiring all employees. All are subject to the same hiring procedures, including drug testing. Employees hired to perform asbestos abatement must show evidence of their accreditation by the State to perform that work. If it is not apparent which classification a prospective employee fits into, (s)he is given an aptitude test, and is then assigned to a craft based on an assessment of his or her skills.

Once hired, all employees attend the same new hire orientation and safety training, receive the same fringe benefits, and are subject to the same policies and procedures, including work rules and disciplinary procedures. All employees work the same shift, and the same 9/80 schedule, under which they work during a two-week period eight nine-hour days and one eight-hour day, and have every other Friday off.

All employees enter and leave work through the same gate, use the same parking lot and restrooms, and take breaks, including their lunch breaks, at the same time. When working during a turnaround or a pre-turnaround, employees eat in a lunch tent. During routine maintenance, the insulator mechanics eat lunch together with the painters and other employees in the lunchroom in the maintenance shop.

Employees in all three classifications attend a general meeting every morning at which Gregg Langlois makes work assignments and informs them who they will be reporting to that day. Once they have been told their assignments, all employees assigned to a particular job, regardless of their classification, go to that job and review it together before beginning work.

All employees wear the same uniform, a Nomex fire-retardant coverall, and the same safety equipment, with the exception of employees who perform asbestos abatement. When performing asbestos abatement, employees are required to wear light blue and white disposable paper suits and respirators. All employees are required to wear earplugs, safety glasses, hard hats, and rubber boots.

Documentary evidence provided by the Employer indicates that the hourly wage range for its various classifications of employees is as follows: painters earn \$9.00 to \$15.00, insulator mechanics earn \$11.00 to \$15.00, and refractory nozzlemen earn \$17.00 to \$18.00.¹⁶ Employees earn fifty cents more per hour when they perform asbestos and/or lead abatement. When performing work outside of his or her classification, an employee continues to be paid his or her regular pay rate. For example, when painters perform work typically associated with the insulator mechanics, they are paid at the painters' rate.

¹⁶ Chris Langlois' testimony with respect to the Employer's wage scales differed from the documentary evidence, indicating that the painters' and insulator mechanics' hourly wage range was the same, \$11.00 to \$15.00, and that the refractory nozzlemen wages range from \$14.00 to \$19.00 per hour. Langlois also testified that Mohon earns \$1.00 per hour more than his fellow insulation mechanics. The documentary evidence indicates a \$2.00 per hour differential.

The Employer employs both journeyman and helper insulator mechanics, compensating them according to their skill level. The Employer only hires experienced journeyman insulator mechanics, and has hired only one inexperienced insulator mechanic, as a helper, during the past two years.

Charles David Moore and Brian Langlois are the highest paid employees, earning an hourly rate of \$18.00, while Chris Mohon and Clovis Vaughn earn an hourly rate of \$17.00. Leadpeople and refractory nozzlemen earn a higher wage than other employees because their work requires a higher degree of skill.

Insulator mechanics are required to provide their own specialized tools, among them knives, nippers, tape, right and left aviation cuts, straight snips, dividers, banders, scratch-alls, screwdrivers, brick saws, trowels, tool pouches. Refractory nozzlemen also provide their own hand tools, some of which are duplicative of, but others of which differ slightly from, those of the insulator mechanics. They include brick saws, trowels, levels, squares, hammers, rubber hammers and bolt cutters. The Employer provides all of the painters' tools, brushes and scrapers. During routine maintenance, the insulator mechanics and refractory nozzlemen store their tools in a gangbox in the maintenance shop, while the painters store theirs in the paint shop located in the blast yard.

Leadpeople

Chris Langlois is responsible for all hiring, firing, recalls, and promotions. Any supervisor is authorized to discipline any employee, regardless of the employee's craft, if (s)he learns of misconduct. Leadpeople are expected to report to a supervisor if something happens on a job while the supervisor is absent, for example employee misconduct, safety issues, or shutdowns. When Langlois learns of employee misconduct from a supervisor, leadperson, or directly from a Motiva representative, he investigates and issues discipline if appropriate. The disciplinary recommendation of a leadperson or supervisor carries no weight in his investigation.

Leadpeople do not have the authority to hire, fire, lay off, or recall employees. Langlois does, at times, consult leadpeople Torres, Ceja, and Vaughn to get information about prospective employees, and relies on their assessment of whether someone is a good employee in making hiring decisions. He also checks with the Employer's hiring center, as many prospective employees have worked for the Employer before.

Leadpeople are not authorized to transfer employees of their own initiative. They may only do so at the direction of Chris or Gregg Langlois. They check employees' work to make sure it is done correctly, order materials, do take-offs, and direct employees in cleaning up their work areas. Chris Mohon spends about twenty percent of his time on routine maintenance working as a leadperson on asbestos abatement projects, and the remaining eighty percent working as an insulator mechanic. The record contains no evidence regarding the amount of time that the other leadpeople spend working as leadpeople, as compared to the amount of time, if any, they spend working in one of the three job classifications not in a leadperson capacity.

While working as leadperson on asbestos abatement projects, Mohon does not work with his tools but instead works outside of the containment area, monitoring air quality, weather conditions, safety, and operating conditions, transporting employees to and from the job site, and making sure that the correct permits have been obtained.¹⁷ He is responsible for maintaining a logbook of daily activities and all other documentation on the asbestos jobs on a daily basis, including noting who has worked on the job, the weather conditions, and the type of work being done. Mohon remains with the crew to make sure that everything goes smoothly when supervisors Gregg Langlois, Tom Varnado, Ronald Rogers, and Ricky Price are unable to be on the job site due to other commitments. The other leadpeople, unlike Mohon, work with their tools because their work is not subject to the same level of safety concerns that are involved in asbestos abatement.

Other than undisputed supervisors and managers, Clovis Vaughn is the only leadperson who is assigned a vehicle. Mohon, Brian Langlois, and Charles David Moore wear radios, as does forklift operator Jorge Arevalo.¹⁸

The Appropriate Unit

The primary issue here is whether the unit sought by the Petitioner, a craft unit of IMS/insulators, is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine whether the unit sought is the most appropriate, but rather whether it is an appropriate unit. In so doing, the Board looks first at the unit sought by the Petitioner. If it is appropriate, the inquiry ends. If, however, the unit sought by the Petitioner is not appropriate, the Board will scrutinize the Employer's proposal. Laurel Associates, Inc. d/b/a Jersey Shore Nursing and Rehabilitation Center, 325 NLRB 603 (1998).

A craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at (1) whether the petitioned-for employees participate in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; and (5) whether the petitioned-for employees share common interests with other employees, including wages, benefits and cross-training. Burns and Roe Services Corp., 313 NLRB 1307, 1308 (1994).

¹⁷ The parties stipulated that at some point during 2004 Chris Mohon worked as general foreman for turnaround in the insulation/ACM classification and that he signs off on Job Safety Analysis reports for asbestos turnaround work on the line that says "supervisor."

¹⁸ On cross-examination, Chris Langlois testified that only supervisors and employees who work under permits that require a radio for communication (for safety reasons) carry radios.

Based on the record as a whole, I find that the insulator mechanics do not constitute a separate craft unit. I find that the unit proposed by the Employer, a wall-to-wall unit consisting of IMS insulators, refractory nozzleman bricklayers, painters, and leadpeople is appropriate.¹⁹

The insulator mechanics' duties, with the exception of asbestos abatement, are functionally integrated with the work of the Employer as a whole, and many of their duties overlap with those of other employees. The record indicates that, although it requires that its journeyman insulator mechanics (and most of their helpers) have prior experience, the Employer does not require them to undergo any specialized training as a prerequisite to hiring. Aside from state certification requirements of employees involved in asbestos abatement, the insulator mechanics are not required to be licensed in their craft, nor must they complete an apprenticeship program prior to or during their employment. Although the record indicates that the insulator mechanics perform certain tasks not performed by other employees, and that they provide their own specialized tools, they are assigned on a regular basis to perform refractory insulation work, including fireproofing, high-temperature plastic and ceramic installation, and (with the painters) to help the refractory nozzlemen in the installation of gunite and brick insulation.

The record indicates that 60 percent of the time on routine maintenance employees in all three classifications work together to complete work orders. While the Employer in the first instance attempts to assign employees within their job classification, the distribution of work, as mandated by Motiva, routinely requires that employees perform functions outside of their specialty area.

Employees in all three classifications enjoy the same benefits and working conditions. Although wages vary among the classifications, there is substantial overlap between the wages of the painters and the insulator mechanics. The slightly higher refractory insulators' wages reflect both their higher skill level, and the fact that several of them are leadpeople.

Therefore, based on the functional integration of the insulator mechanics' work with the overall work of the Employer at Motiva, the substantial overlap of job duties between classifications, and the shared benefits and working conditions, I find the appropriate unit to be a wall-to-wall unit of IMS insulators, refractory nozzleman bricklayers, and painters.

¹⁹ My conclusions are based on my inability to give substantial weight to a large portion of Petitioner's evidence because its witnesses were short-term employees who, by virtue of their physical segregation from other employees (including the majority of the other insulator mechanics) while performing asbestos abatement, had limited opportunity to observe other employees at work, and therefore had limited access to direct information about the extent to which the insulator mechanics' work is functionally integrated, and their job duties overlap, with those of employees in the other two job classifications.

Although the Petitioner seeks an adverse inference against the Employer based on its failure to produce documents sought in a subpoena issued prior to the hearing, virtually none of which the Employer produced, I decline to make such a finding for the following reason: at the conclusion of the hearing, the hearing officer rescinded his rulings on the Employer's Petition to Revoke in response to Petitioner's assertion that it no longer wished to receive the documents. Since the Petitioner, of its own volition, effectively withdrew the subpoena at the conclusion of the hearing, I draw no adverse inference from the Employer's failure to produce the requested documents.

Supervisory Status of Leadpeople

Pursuant to Section 2(11) of the Act, the term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). The status of a supervisor under the Act is determined by an individual’s duties, not by his title or job classification. New Fern Restorium Co., 175, NLRB 871 (1969).

The burden of proving supervisory status rests on the party seeking to exclude an individual or individuals from voting for a collective bargaining representative. NLRB v. Kentucky River Community Care, Inc. 121 S. Ct. 1861 (2001); Tuscon Gas & Electric Co., 241 NLRB 181 (1979). Conclusory evidence, without specific explanation that the disputed person or classification in fact exercised independent judgment, does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101, 102 (1992).

Applying these principles, I find that the leadpeople are not statutory supervisors because the Petitioner has failed to establish that they possess any of the primary indicia of supervisory status. Although they report employees' workplace infractions to management, the mere reporting of misconduct does not, by itself, establish supervisory status. *See Progressive Transportation Services*, 340 NLRB No. 126 (2003). The record contains no evidence that they effectively recommend discipline. Similarly, although the site manager sometimes relies on the leadpeople's assessments of job candidates' skills, such reliance is insufficient to confer supervisory status, since there has been no demonstration that the leadpeople effectively recommend candidates for hire. In addition, although the Petitioner maintains that the leadpeople have the authority to direct or assign work, the record is devoid of evidence that Mohon or any of the leadpeople exercise independent judgment in directing other employees or in assigning them work. Moreover, the Petitioner's contention that the leadpeople (Mohon, in particular) evaluate employees' work is insufficient to establish supervisory status in the absence of evidence of personnel action taken on the basis of those evaluations.²⁰

Finally, the Petitioner points to Mohon's designation as a general foreman during turnarounds as a basis for his exclusion from the unit. Although the record establishes that turnarounds occur, at most, once or twice per year, the record contains no evidence concerning his performance of these duties beyond the mere stipulation of the parties that he performs this

²⁰ With the exception of Brian Langlois, discussed below, Petitioner has not produced any basis other than asserted supervisory status for excluding the leadpeople. The record permits a finding that the leadpeople share a sufficient community of interest with unit employees.

function during turnarounds. In short, the Petitioner has failed to establish that Mohon spent a regular and substantial portion of his time performing supervisory tasks, and therefore has not established his supervisory status on this basis. See Aladdin Hotel, 270 NLRB 838, 840 (1984).

In the absence of any statutory indicia of supervisory authority, as is the case herein, the existence of secondary indicia of supervisory status, and non-statutory considerations, such as disparity in wages, cannot provide the basis for conferring that status upon an individual. Harvey's Resort Hotel, 271 NLRB 306 (1984).

Familial Relationship of Brian Langlois

Petitioner argues in its brief that Brian Langlois should be excluded because he is the brother of site manager Chris Langlois and assistant site manager Gregg Langlois. However, when it comes to resolving the question of whether close relatives of management representatives ought to be included in a bargaining unit, the Board has traditionally held that "the mere coincidence of a family relationship between an employee and a member of management does not, without a showing of special status for the employee, warrant the exclusion of that employee from a bargaining unit where the employee's inclusion in the unit would be otherwise appropriate." Tops Club, 238 NLRB 928, 929 (1978). The record contains no evidence that Brian Langlois' wages are disproportionate to his job level or seniority, or that he receives any special benefits or favored treatment. The record also contains virtually no evidence about the extent to which either Chris or Gregg Langlois directly supervises or directs his work. Petitioner's contention that Brian Langlois should be excluded simply because two of his brothers are in upper management is, in the absence of such evidence, conclusory and insufficient to establish that Brian Langlois is accorded special status by the Employer by virtue of his relationship to Gregg and Chris Langlois.

Conclusion

In conclusion, I find that the Petitioner has not met its burden of establishing the supervisory status of Mohon or any of the other leadpeople, and that therefore they are appropriately included in the bargaining unit. I further find that, given the absence of evidence that he is accorded special status by virtue of his relationship to the site manager and assistant site manager, Brian Langlois is eligible for inclusion in the unit.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of Basic Industries constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time IMS insulators, refractory nozzleman bricklayers, painters, and leadpeople employed by Basic Industries at the Motiva Enterprises, Inc. job site in Convent, Louisiana, but excluding all other employees, all office clerical employees, professional employees and all guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by the International Association of Heat and Frost Insulators and Asbestos Workers, Local 53, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before November 19, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by November 26, 2004.

/s/ Ronald S. Cohen _____
Ronald S. Cohen
Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 12th day of November, 2004.

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